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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/623,716

07/22/2003

Matthew Hayduk

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WASHINGTON, DC 20036

EXAMINER

CARTAGENA, MELVIN A

ART UNIT

PAPER NUMBER

3754

MAIL DATE

DELIVERY MODE

08/28/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/623,716

Applicant(s)

HAYDUK, MATTHEW

Examiner

Melvin A. Cartagena

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-11,13-21,23-35 and 39-62 is/are pending in the application.
- 4a) Of the above claim(s) 45-55 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-11 and 13-18 is/are allowed.
- 6) ☒ Claim(s) 1,2,4-11,13-21,23-35,39-44 and 56-62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 13, 2007 has been entered.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the locking means claimed in claimed 1, line 7, are not described in the specification.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1, 2, 4-7, 19-21, 23-34 and 56-60 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: it's not clear from reading claim 1, line 7 and 8, what adjustment

Art Unit: 3754

of the reception chamber are prevented by the locking means, it appears the locking means prevent any axial movement of the mixing chamber with respect to the housing if the rod were to stick to the mixing chamber as the rod reciprocates back and forth. In page 32, line 13 and 14, rod stick movement prevention means are discussed, the mixing chamber is secured to the housing by the movement prevention means, no adjustment takes place while the dispenser is in use.

In light of the above informalities, the claims have been examined as could best be understood by the examiner. The examiner's failure to apply prior art to any of the claims should not be construed as an indication of allowable subject matter.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 4, 5, 20, 21, 23-30, 34, 56-58 and 60-62 rejected under 35 U.S.C. 102(b) as being anticipated by US 5,186,905 to Bertram et al.

Bertram shows a cartridge port for dispensing foam as seen in Figs. 1 and 5 having a housing 11, a fluid reception chamber 13 formed out of a cold flow material (Teflon) and having a rod passageway formed to received a rod 17, an annular locking means 63, compression washers 26, at least two chemical inlet ports 16, an enlarged solvent fluid receiving chamber 25, removable back and front cap 30 covering the solvent receiving chamber and retaining seals 23 and 24.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 31-33, 35-38, 40, 41, 42, 44 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,186,905 to Bertram et al. in view of US 4,993,596 to Brown.

Bertram shows all claimed features as discussed above but is silent about using threads to assemble the components of the mixing chamber and assembling the chamber without the use of tools. Brown shows a mixing and dispensing gun with using threads 134 and 116 to assemble the dispensing gun without the use of tools, see the abstract, lines 1-9. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Bertram to utilize threads to assemble the components of the dispensing gun and to assemble the gun by hand without the use of tools as taught by Brown since the above combination represents a substitute of well-known alternative equivalent mechanical fastening to mechanically assemble the multiple components of the gun which is well known within the level of skill in the art, and eliminating the need for using tools to assemble the dispensing gun makes the assembly and disassembly fast and foolproof.

Allowable Subject Matter

9. Claims 8-11 and 13-18 allowed.

Response to Arguments

10. Applicant's arguments filed June 13, 2007 have been fully considered but they are not persuasive. The locking element in the device of Bertam is fitted under pressure in the housing 11 and a part of the locking element fits into the fluid reception chamber 13, as shown in Fig. 5. The locking ring 63 prevents the chamber 13 from moving in the radial and axial direction with respect to the housing 11, any binding of the rod 17 with the chamber 13 during use would not result in the chamber 13 displacing in any direction.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin A. Cartagena whose telephone number is (571) 272-4924. The examiner can normally be reached on T-F (7:30AM to 6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Response to Arguments

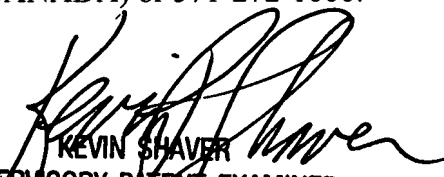
10. Applicant's arguments filed June 13, 2007 have been fully considered but they are not persuasive. The locking element in the device of Bertam is fitted under pressure in the housing 11 and a part of the locking element fits into the fluid reception chamber 13, as shown in Fig. 5. The locking ring 63 prevents the chamber 13 from moving in the radial and axial direction with respect to the housing 11, any binding of the rod 17 with the camber 13 during use would not result in the chamber 13 displacing in any direction.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin A. Cartagena whose telephone number is (571) 272-4924. The examiner can normally be reached on T-F (7:30AM to 6:00 PM).

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MAC 8/21/07
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